as giving it up. But that doctrine seems too indefinite to be of any legal value. In the later case of *Ford* v. *Whitlock*, 27 Vt. 265, it was said that the true principle for this class of cases was to be found in an analogy to the rules of dedication of land to public uses. And this seems to have met the approval of some text-writers. Gould, Waters, 2d ed. p. 320. But it seems doubtful if the analogy is sound, for we can find no act of dedication in the mere neglect of the defendant to turn the stream back; nor is there a particular act of acceptance on the part of any individual or of the public. It would therefore be necessary to place this case on the footing of an implied dedication and acceptance. But here the rule is that when "the only evidence of the dedication of a way is its having been used as such by the public, such user, in order to constitute sufficient evidence of such dedication, must have continued for at least twenty years." Washburn, Easements, 4th ed. p. 220. And in this country it is not settled that user for a length of time shorter than the statutory period is a sufficient acceptance. The present case, where the defendant's neglect was of much shorter duration, cannot be decided on principles of dedication. It is also impossible to say that there is here an analogy to a license; for it is clear that the mere abstention from using is not in fact a license to other owners. Granted, however, a natural right to return the stream to the old bed, it may well be that the neglect to do so leads other proprietors to change their positions. And in such a case one may well find the basis for an estoppel *in pais* — a more satisfactory basis than that suggested by the authorities for stopping the landowner in the exercise of his right.

CUSTODY OF INFANTS. — The recent case of *In re Minors of Charles and Anna Luck*, Weekly Law Bulletin, Feb. 19, 1900, illustrates the modern attitude of the law as to the custody of young children. There Charles and Anna Luck before their marriage agreed that children of the union should be trained in the religious faith of the mother. After the mother's death the two infant children were taken by relatives of the father who entertained his religious belief. Four years later the father died. Applications for guardianship were then made by relatives of both the father and the mother, representing opposing religious beliefs. It was held that the relatives of the father should keep the children. Notwithstanding the agreement, the four-year period of training with the father's relatives had created attachments it was not wise to break. The case goes squarely upon the modern view that in questions of custody the welfare of the child is the paramount consideration.

Such, however, has not always been the attitude of the courts. An examination of the Roman law reveals that no such idea could be entertained. The child was then more nearly a species of property. 8 HARVARD LAW REVIEW, 39. The development of the English law, however, shows the gradual growth of the idea that justice might demand a consideration of the welfare of the child in granting its custody. There was both a chancery and a common law jurisdiction in these matters. *Queen* v. *Gynzall*, [1893] 2 Q. B. 232. From early times the former was exercised in accordance with the theory of the rights of the Crown over its subjects. Hence it often assumed the right to act as the welfare of the child demanded. But a harsher doctrine appeared in the common law court in proceedings on the writ of habeas corpus. Here it was said that

the father had a right to the custody of the child. *Rex* v. *Greenhill*, 6 Nev. & Man. 244. Accordingly, the child was given to him even when it might seem wiser to have given it to another. The continued refusal of the courts to exercise a discretion in the matter was finally met by the passage of the Talfourd Act, 2 & 3 Vict. c. 54, which expressly allowed the court of chancery, in its discretion, to give the mother access to the children in custody of the father, and further to give custody of infants under seven to the mother. This age was later increased to fourteen years. Now, by 36 & 37 Vict. c. 66, the rules of equity in relation to the custody of infants are to prevail in the common law courts. By the present English law there is thus a recognition of the interest of the child, but one still sees a tendency to regard the right of the father as controlling, and the cases therefore are not always free from technicalities. Hochheimer, Custody of Infants, 2d ed. p. 33. The American cases seem never to have held with such strictness to the idea of the father's paramount right. Schouler, Domestic Relations, 5th ed. § 248. That right has been recognized, but at the same time the broader view has been taken that the child has rights of its own which the court may protect to subserve the present and future interests of the infant. *United States* v. *Green*, 3 Mas. 482. This idea that the child is but a young citizen entitled to all the advantages possible to secure to it is the most advanced which the cases have presented, and the principal case is clearly right in declaring that the welfare of the child itself is the important factor in determining its custody.

CORPORATION NAMES. — A novel question was presented in two recent New York cases, *Colonial Dames of America* v. *Colonial Dames of New York*, 60 N. Y. Supp. 302 (Sup. Ct., Sp. Term, New York Co.), and *Society of Eighteen Hundred and Twelve* v. *Society of 1812 in the State of New York*, New York Law Journal, Jan. 23, 1900. In each a membership corporation, organized ostensibly for patriotic purposes, sought an injunction to restrain a similar corporation from using a name so nearly resembling that of the plaintiff corporation as to cause confusion. In neither case had the plaintiff sustained any pecuniary damage, but in each an allegation was made of the probability of such damage in the future. The injunction was refused in the first case on the ground that no injunction could be granted for the non-fraudulent use of a name when there was no interference with any trade of the plaintiff. In the later case, in which the former does not appear to have been mentioned, the injunction was granted, apparantly on the broad principle that the probability of the purposes for which the plaintiff corporation was organized being injuriously affected by the defendant's use of a similar name was a sufficient ground for injunctive relief. The court also intimated that the case came within the rules governing an infringement of trade names.

While one must sympathize with the desire of the court to protect the prior corporation, it is difficult to see that any right was violated by the defendant. And admitting that there was here *damnum*, which, indeed, in neither case satisfactorily appeared, for an action to lie there must also be *injuria*. In a leading case in which a somewhat similar question was involved, *Day* v. *Brownrigg*, 10 Ch. D. 295, the plaintiff was damaged by the defendant calling his adjoining property by the name by which the plaintiff's had been known for sixty years, and it was urged that alone